

REMARKS

The Office Action dated February 1, 2008 has been carefully considered. Claims 1, 33, 35, 42 and 48 have been amended. Claim 16 has been canceled. Claims 1, 7-15, 17-39, 35, 36, 41, 42, and 47-49 are in this application.

Support for the amendment to claims 1, 33, 35, 42 and 48 is found through the specification and in particular on page 16, lines 14-29. No new matter has been entered.

The previously presented claims were rejected under 35 U.S.C. § 112 as indefinite. Applicants have amended the claims to obviate the Examiner's rejections.

The previously presented claims 1, 13-15, 17, 18, 21, 27, 29-33, 42, 47 and 48 were rejected under 35 U.S.C. § 103 as obvious in view of U.S. Patent No. 5,780,047 to Kamiya et al. in combination with U.S. Patent No. 5,467,798 to Royds et al. Applicants traverse the rejection.

The present claims recite one or more of the cosmetic, dermatological, or pharmaceutical active ingredient encapsulated in spray-dried nanospheres or microspheres dispersed in the polymeric matrix layer, the nanospheres or microspheres are formed of a hydrophobic material. There is no teaching or suggestion of encapsulating active ingredients in Kamiya et al.

Royds et al. is directed to a patch of a pressure sensitive material for adhering the patch to the skin. Microcapsules are dispersed within a matrix adapted to absorb moisture from the skin. The microcapsules are formed of a core of the active ingredients formed of an active coating material. However, Royds et al. do not teach or suggest spray-dried nanoparticles or microparticles formed of a hydrophobic material. The spray-dried nanoparticles or microparticles of the present invention provide a controlled release system of the active ingredients over time from the particles. In contrast, Royds et al. is directed to a coated material which releases the active upon dissolution of the coating and does not release the active on a controlled basis from the particle itself. Accordingly, the invention defined by the present claims is not obvious in view of Kamiya et al. in combination with Royds et al.

The previously presented claims 7, 8 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kamiya et al. and Royds et al. further in view of U.S. Patent Application Publication No. 2003/0027833 to Cleary et al. Applicants traverse the rejection.

The Examiner conceded that Kamiya et al. and Royds et al. do not teach the specific antiseptics and antibiotics recited in claims 7, 8 and 10. The Examiner attempted to cure the defect by combining Kamiya et al. and Royds et al. with Cleary et al. However, as discussed above, and incorporated herein, Kamiya et al. and Royds et al. are further defective in failing to teach that one or more of the cosmetic, dermatological, or pharmaceutical active ingredients are encapsulated in spray-dried nanospheres or microspheres dispersed in a polymeric matrix layer. Cleary et al. do not cure the defect because it does not teach the missing limitation. Since the combination of prior art references the Examiner proposed is nonetheless defective in failing to teach each of the limitations incorporated into the claims, no prima facie showing of obviousness has been presented and the claims are patentable over the prior art.

The previously presented claim 11 was rejected under 35 U.S.C. § 103(a) as being unpatentable over any of U.S. Patent No. 5,780,047 to Kamiya et al. or Royds et al. Similarly claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kamiya et al. and Royds et al. in view of U.S. Patent No. 6,497,887 to Zecchino et al. Applicants traverse the rejections.

The Examiner conceded that neither of the prior art references teach the anti-inflammatory agents recited in claim 11. The Examiner rationalized that since the references disclosed that anti-inflammatory agents are suitable for delivery from the respective compositions, it was within the skill in the art to determine the particular agents in claim 11. The Examiner further conceded that Kamiya et al. failed to teach the antihistamine of claim 12 but stated that Zecchino et al. teach the antihistamine. Notwithstanding the Examiner's argument, the various combinations of the two references still fail to disclose every limitation that is incorporated into claims 11 or 12. The discussion above of the missing limitations is incorporated herein. Since the combination of prior art references is nonetheless defective in failing to teach a membrane having that one or more of the cosmetic, dermatological, or pharmaceutical active ingredients are encapsulated in spray-dried nanospheres or microspheres dispersed in a polymeric matrix layer and that the nanospheres or microspheres are formed of a hydrophobic material; the polymeric matrix layer of the patch that dissolves in water or disintegrates upon rinsing the patch with water; or a patch that becomes tacky after wetting, so

that the adhesive property of the tacky patch adheres the patch to the skin, no prima facie showing of obviousness has been presented and the claims are patentable over the prior art.

The previously presented claims 9, 19, 20, 22-24, 26, 35, 36, 41 and 49 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,780,047 to Kamiya et al. combined with Royds et al. in view of U.S. Patent Application Publication No. 2001/0007671 to Gueret. Applicants traverse the rejection.

The Examiner conceded that Kamiya et al. fail to teach the salicylic acid as claimed in claim 9, the transparent polymeric film as claimed in claim 19, the colored film as claimed in claim 20, the cosmetics claimed in claims 22-24, the effervescent claimed in claim 26, or the period of applying the film as claimed in claims 35, and 36. The Examiner attempted to cure the defect by combining the teachings of Kamiya et al., Royds et al. and Gueret. However, as discussed above and incorporated herein, Kamiya et al. is further defective in failing to teach that one or more of the cosmetic, dermatological, or pharmaceutical active ingredients are encapsulated in spray-dried nanospheres or microspheres dispersed in a polymeric matrix layer and that the nanospheres or microspheres are formed of a hydrophobic material and a patch that becomes tacky after wetting, so that the adhesive property of the tacky patch adheres the patch to the skin. Gueret does not cure the defect because it does not teach the missing limitations. For this reason, alone, no prima facie showing of obviousness has been presented and the claims are patentable over the prior art.

The previously presented claims 25 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over any of U.S. Patent No. 5,780,047 to Kamiya et al. and Royds et al. in view of U.S. Patent No. 6,419,935 to Gueret ("Gueret '935"). Applicants traverse the rejection.

The Examiner conceded that Kamiya et al. and Royds et al. fail to teach dihydroxyacetone as in claim 25 or the size of the film as in claim 28. The Examiner stated that Gueret '935 teaches these aspects and that it would have been obvious to combine the teachings of either Kamiya et al. or Royds et al. with that of Gueret '935. Notwithstanding the Examiner's argument, the various combinations of references still fail to disclose every limitation that is incorporated into claims 25 or claim 28. The discussion above of the missing limitations is incorporated herein. Since the combination of prior art references is nonetheless defective in

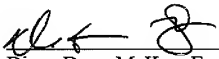
failing to teach each of the limitations incorporated into the claims, no prima facie showing of obviousness has been presented and the claims are patentable over the prior art.

In view of all the rebuttal argument presented above, Applicants respectfully request that all the rejections for obviousness be reconsidered and withdrawn.

In view of the foregoing, Applicants submit that all pending claims are in condition for allowance and request that all claims be allowed. The Examiner is invited to contact the undersigned should she believe that this would expedite prosecution of this application. It is believed that no fee is required. The Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 13-2165.

Respectfully submitted,

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